

## Outline of the Substantial Control List System

November 15, 2021

One Asia Lawyers Tokyo office

Hironori Matsumiya

On September 17, 2021, the "Regulations Concerning Storage, etc. of Information on Substantial Controlling Persons in Commercial Registry" (the "Regulations") were promulgated, and the operation of the "Substantial Controlling Persons List System" (the "System") will commence on January 31, 2022. The "Substantial Shareholder List System" (hereinafter referred to as the "System") will become effective on January 31, 2022. In this newsletter, we will explain the System.

### **1 Background**

There is a growing demand in Japan and abroad for information on the beneficial owners of corporations, in order to improve the transparency of corporations and to prevent the misuse of corporations for purposes such as money laundering.

In light of these circumstances, this system has been established as one of the measures to continuously identify the beneficial owner of a corporation after its establishment.

### **2 Overview**

Under this system, a joint stock company (including a special limited liability company) shall submit to the registrar of the commercial registry a document containing information, etc. on its substantial shareholder (hereinafter referred to as the "List of Information on Substantial Shareholder"). Under this system, a stock company (including a special limited liability company) may submit to the registrar of the commercial registration office a document prepared by the stock company stating information, etc. on the substantial shareholder (hereinafter referred to as the "List of Information on the Substantial Shareholder"), together with the prescribed attachments, and request that the registrar keep and issue a certified copy of the document. (hereinafter referred to as "List of Information on Substantial Controlling Persons") to the registrar of the commercial registration office, together with the prescribed attachments, and request the registrar to keep and issue a certified copy of the List. This system can be used free of charge.

The term "substantial shareholder" as used in this system means a natural person

(including those deemed to be a natural person pursuant to the provisions of paragraph 4 of the same article) as defined in Article 11, paragraph 2, item 1 of the Enforcement Rules of the Act on Prevention of Transfer of Criminal Proceeds.

Specifically, those who fall under (1) or (2) below.

- (1) A natural person who directly or indirectly holds voting rights that exceed 50% of the total number of voting rights of the company (except when it is clear that this person does not have the intention or ability to substantially control the business management of the company)
- (2) If there is no person falling under (1) above, a natural person who directly or indirectly holds more than 25% of the total number of voting rights of the company (except when it is clear that this person does not have the intention or ability to substantially control the business management of the company).

Those deemed to be natural persons" include the national government, local governments, associations or foundations without personality, listed companies, etc. and their subsidiaries (see Article 4, Paragraph 5 of the Act on Prevention of Transfer of Criminal Proceeds, Article 14 of the Enforcement Order of the Act on Prevention of Transfer of Criminal Proceeds, and Article 11, Paragraph 4 of the Enforcement Regulations of the Act on Prevention of Transfer of Criminal Proceeds).

### **3 Procedure Flow**

The flow of keeping and delivering a copy of the list of information on substantial persons in control is as follows.

- (1) Request by a representative or agent of the Company
  - ① Preparation of the list of information on the substantial controlling party
  - ② Preparing the declaration form
  - ③ (3) Preparation of attachments (see "Documents Required to be Attached" and "Documents that Can be Attached" below)
  - ④ Submit a written application to the commercial registration office that has jurisdiction over the location of the head office of the proposing company.

- (2) Confirmation and issuance by the commercial registration office
  - ① Confirmation of the contents of the application by the registrar
  - ② Preservation of information on the real party in control
  - ③ Delivery of a copy of the list of beneficial owners' information with a certification statement to the effect that it is a copy of the list of beneficial owners' information kept at the commercial registry office

The following documents are listed as attachments to the declaration.

<Documents that must be attached (Article 4, Paragraph 1 of these regulations)>

- (1) List of Substantial Controlling Party Information
- (2) Any of the following documents pertaining to the Declarant Company
  - ① A copy of the list of shareholders as of the filing date
  - ② Certificate of Acceptance of Declaration and Certificate of Authentication issued by a notary public (limited to cases where the first fiscal year after incorporation has not yet passed)
  - ③ A copy of Appendix II of the corporation tax return (for the business year immediately preceding the business year in which the request date falls; limited to cases where the first business year after establishment has passed)
- (3) If the description in the list of information on the substantial shareholder as described in (1) above does not match the description in the document described in (2) above, a document that clarifies the reason for the discrepancy

<Documents that can be attached (Article 4, Paragraph 2 of this Regulation)>

- (1) A certificate prepared in the course of duties by the mayor of the municipality or other public official that contains the same name and residence as that of the substantial person in control (including a certified copy stating that the substantial person in control is the same as the original)  
For example, a copy of both the front and back of your driver's license, or a copy of your certificate of residence.
- (2) Any of the documents listed in (2)(i) through (iii) of <Documents Required to Be Attached> pertaining to the superior company (a corporation controlled by a substantial shareholder).  
However, if the description in the list of substantial controlling persons does not match the description in the above document, a document clarifying the

reason for the discrepancy must be attached.

#### **4 Points to note in this system**

- (1) It does not prove the truthfulness of the information regarding the substantial controlling party.

The beneficial owner under this system is determined based on the information declared by the offering company, using the percentage of voting rights held as a formal criterion, and the registrar does not certify the beneficial owner itself. In fact, a copy of the list of information on the substantial shareholder will have the following inscription on it: "This is a copy of the list of information on the substantial shareholder prepared by the company and kept by the registrar after confirming that it is consistent with the documents listed in the "Attached Documents" column, and does not prove that the contents of the list are true. (2-2(4)(a)(c) of the "Notice on the Handling of Affairs in Connection with the Enforcement of the Regulations Concerning the Custody of the List of Information on the Substantial Shareholder at the Commercial Registry").

If the requesting company uses false materials, sanctions may be imposed in accordance with the relevant laws and regulations depending on the individual case ("Results of the Request for Opinions on the Draft Regulations Concerning the Retention of the List of Beneficial Owners' Information at the Commercial Registry", No. 15). For example, if the proposing company makes a false entry in the shareholders' register, the proposing company will be subject to a fine of up to one million yen pursuant to Article 976, Item 7 of the Companies Act.

- (2) Requests in the case of a change in the effective control person shall be voluntary.

Since this system issues a copy of the substantial control persons list based on a voluntary request, even if there is a change in the information on the substantial control persons list, it is also voluntary whether or not the request for keeping and delivering a copy of the list of substantial control persons after the change is made. Therefore, if you need a copy of the substantial controlling persons list that contains new information, you need to make another request (Ministry of Justice, "Q&A on the substantial controlling persons list system," 5-2).